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China & the Arctic: Why the focus on international law matters

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There has been a flurry of reaction to China's recently released White Paper on the Arctic. It is the first such policy published by the country, and its focus on international law is worth further in-depth examination.¹

China's reliance on international law in its White Paper may seem surprising. We tend to think that mainly small powers rely on international law. To put it simply, small states lack the power to influence international relations on their own, so they like to utilize multilateral institutions and international law as a platform to allow them to interact in a more equal fashion in the international system.

However, China is not a small power, but rather a massive country with a large population and huge economy. Therefore, their focus on international law in the White Paper is surprising, and warrants taking a more critical look.

White paper structure – A review

China's Arctic policy starts with a description of the Arctic, the Arctic States, the region's governance mechanisms, and an overview of the Arctic environment and its peoples.

The policy then elaborates China's position as an important stakeholder in the Arctic and the country's main policy goals. These goals include deepening exploration and understanding of the Arctic, protecting the eco-environment of the Arctic and addressing climate change, utilizing Arctic resources in a lawful and rational manner, participating actively in Arctic governance and international co-operation, and promoting peace and stability in the Arctic.

Arctic governance under the spotlight

Approaching China's policy from the perspective of governance, it is interesting how China first outlines the current Arctic governance framework:

There is no single comprehensive treaty for all Arctic affairs. The Charter of the United Nations, the United Nations Convention on the Law of the Sea (UNCLOS), the Spitsbergen Treaty and other treaties and general international law govern Arctic affairs at present.
(Emphasis by the author)

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¹ China's Arctic Policy, The State Council Information Office of the People's Republic of China, January 2018, http://english.gov.cn/archive/white_paper/2018/01/26/content_281476026660336.htm (last accessed 01 August 2018).

China considers this established global international law framework, as somehow governing the Arctic. China also justifies its legitimacy to act in the Arctic using the very same broad international law framework, given that it is one of the permanent members of the UN Security Council, and a party to the United Nations Convention on the Law of the Sea (UNCLOS). While UNCLOS is almost always mentioned when discussing Arctic governance, China's strong and repeated reference to the UN Charter represents a clear emphasis for it as a basis of legitimacy.

Policy, climate, and science in the high seas

The UNCLOS-based rules for marine science are also emphasized in China's White Paper, as a reminder that UNCLOS also guarantees marine scientific freedoms for non-coastal states, especially in the high seas.

China also affirms that it is a committed party to global environmental treaties, follows the environmental laws and policies of the Arctic, and even encourages the adoption of more stringent environmental laws and policies. As a party to the Paris agreement, China quite naturally prioritizes tackling climate change via global measures rather than regional measures.

In the policy section "Utilizing Arctic resources in a lawful and rational manner," China encourages all countries to follow relevant international treaties, UNCLOS, the Spitzbergen treaty, as well as relevant general international law, together with the national laws of Arctic states.

With respect to the opening of shipping routes in the Arctic, China affirms that it respects the Arctic coastal states' jurisdictions over their waters, but also emphasizes the importance of freedom of navigation.

Support for international agreements

China maintains that disputes over shipping routes should be settled in accordance with international law. Therefore, China expresses support for the International Maritime Organization's (IMO) Polar Code and encourages the IMO to play an active role in enacting future navigation rules for the Arctic.

In terms of exploring and exploiting oil and gas, mineral, and other non-living resources, China affirms the sovereignty of Arctic states over their resources, and encourages Chinese enterprises to follow national law, if they engage in such activities in the region.

Regarding fisheries, China supports concluding a legally binding agreement on the high seas portion of the Arctic Ocean, and, in the future, establishing a regional fisheries management organization. This represents a significant endorsement from a state that is not coastal to the Arctic Ocean.

In the section on China's active participation in Arctic governance and international co-operation, it references a plethora of international law instruments to which it abides, and are applicable in the Arctic.

Why is China placing a heavy emphasis on international law?

For China, the primary structures governing the Arctic include:

- The United Nations and its Security Council (where China is a permanent member),
- UNCLOS (to which China is a party),
- UN specialized agencies like IMO and the treaties it produces (to which China is a party to most treaties),
- The UN-based regimes combatting climate change and various other international environmental treaties (many of which China is a party to).

As a state that is outside of the Arctic region, it is beneficial for China to invoke a framework of rules that most strongly emphasizes China's role in Arctic governance. In the predominant intergovernmental forum of the Arctic, the Arctic Council, China is only an observer. This status is lower than that of small indigenous peoples' international organizations, which would normally be considered non-governmental organizations in an intergovernmental organization or in treaty negotiations. While invoking the entire framework of international law, China places itself in the actors' seat. It is China, together with other permanent members of the UN Security Council, which has a unique responsibility for maintaining peace and security in the Arctic. It is China and the rest of the international community that are committed to managing the oceans via UNCLOS, mitigate climate change via the Paris Agreement, and combat other environmental problems through various international environmental treaties.

In China's Arctic policy, Arctic governance is mostly represented as international governance through international law and institutions like the UN and subsequent specialized agencies or relevant treaties. China does acknowledge the Arctic Council's role as a regional institution, but clearly emphasizes a framework in which China can play a more significant role.

This is not necessarily a negative approach. It is significant that China highlights the importance of international law, but in the White Paper, China does not treat all branches of international law in the same way. China does emphasize respect for indigenous peoples in many parts of the policy document, but does not use the appropriate language. It acknowledges their role in the region, but speaks of their interests and the importance of their traditions and cultures, rather than their internationally guaranteed rights.

Overall, however, the Chinese Arctic policy is well crafted. The actual behavior of China in the region has been very much a practical application of its policy document. The country has followed international and national legal procedures, and has been a constructive force in the Arctic Council. Yet by invoking the broad general international law framework, China is constructing a framework in which it has a primary role.

Within the Arctic council, China remains an observer along with countries like Switzerland or organizations like the Arctic Institute of North America (AINA) and the International Federation of Red Cross & Red Crescent Societies (IFRC).

However, under the framework of international law, China is one of the Arctic's main actors.